

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

COMMERCIAL METALS CO.	§	CIVIL ACTION NO. 15-cv-2621
d/b/a CMC COMETALS STEEL, and	§	
ZURICH AMERICAN INSURANCE CO., as	§	
subrogee of COMMERCIAL METALS CO.	§	
d/b/a CMC COMETALS STEEL,	§	
Plaintiffs	§	
V.	§	
M/V ORIENTAL PHOENIX, her engines,	§	
boilers, tackle, etc., <i>in rem</i>, and	§	
NEW VANTAGE SHIPPING LTD.,	§	
<i>in personam</i>	§	
Defendants	§	ADMIRALTY

COMPLAINT

Plaintiffs, COMMERCIAL METALS CO. d/b/a CMC COMETALS STEEL (CMC), and ZURICH AMERICAN INSURANCE COMPANY (Zurich) as subrogee of Commercial Metals Company d/b/a CMC Comets Steel, allege for their complaint against the M/V ORIENTAL PHOENIX, *in rem*, and NEW VANTAGE SHIPPING LTD., *in personam*, the following causes of action which respectfully will be proven by a preponderance of credible evidence.

1. This is an admiralty and maritime claim within the meaning of 28 U.S.C. §1333 and Rule 9(h) of the Federal Rules of Civil Procedure, or is brought pursuant to 9 U.S.C.A. §8, for preservation of *in rem* security for arbitration.
2. Plaintiffs are the owner and subrogated underwriters of cargo shipped on board the captioned vessel which is more particularly described in the attached Schedule A, and for which bills of lading were issued. Plaintiffs' principal offices and places of business are stated in Schedule A.

3. Defendant New Vantage Shipping LTD had and now has the legal status and offices and places of business stated in Schedule A. They were engaged in business as common carriers of merchandise by water for hire, and were the vessel owners, operators, charterers, managers and controlled the captioned vessel which now is, or will be, within the jurisdiction of this Court or another U.S. court of competent jurisdiction, during the pendency of the action. Plaintiffs request that the Court permit later service of the *in rem* aspect of this case, awaiting this foreign vessel's return to the United States for service of *in rem* process.

4. The cargo described in Schedule A was sold, shipped, inspected, carried, kept, discharged and delivered from the captioned vessel not in the same good order and condition as when received, rather, it was delivered by defendants in non-conforming and damaged condition, mis-delivered and non-delivered due to the fault, neglect, deviation, unseaworthiness, maritime tort, breach of warranty, and conversion of defendants, their agents and servants.

5. Plaintiffs sue on their own behalf and as agents and trustees on behalf of any other party who may now have or hereinafter acquire an interest in this action

6. Plaintiffs have duly performed all duties and obligation on their part to be performed.

7. Plaintiffs' damages are in excess of **\$165,348.16** for which demand has been made but not paid. Plaintiffs demand recovery from defendants, jointly and severally.

Wherefore, Plaintiffs demand that summons issue against defendants in proper form; that judgment be entered in their favor in an amount exceeding \$165,348.16 plus interest and the costs and disbursements of this action; that process in due form of law according to the practice of this Court in causes of admiralty and maritime jurisdiction may issue against the captioned vessel, her engines, etc., and that all persons having or claiming an interest therein be cited to appear and answer under oath all and singular the matters stated, and this Court pronounce judgment in favor of Plaintiffs for their damages together with interest, costs and disbursements, and the captioned vessel be condemned and

sold in satisfaction, and that this Honorable Court grant Plaintiff such other and further relief which is just and proper.

Respectfully submitted,

W. SEAN O'NEIL, ATTORNEY AT LAW

/s/ W. Sean O'Neil, Esq.

W. Sean O'Neil (#24033807)
1880 S. Dairy Ashford St., Suite 208
Houston, Texas 77077
Telephone: (281) 496-0193
Telefax: (281) 496-0680
ATTORNEY FOR PLAINTIFFS

SCHEDULE A
LEGAL STATUS AND PLACE OF BUSINESS OF PARTIES

Plaintiff, **Commercial Metals Company d/b/a CMC Cometals Steel**, was and now is a Delaware corporation with an office and place of business in the State of Texas.

Plaintiff, **Zurich American Insurance Company**, was and now is a New York corporation with an office and place of business in the State of Illinois. Zurich brings this action as subrogee of Commercial Metals Company d/b/a/ CMC Cometals Steel.

M/V ORIENTAL PHOENIX (IMO 9632791) was at all material times a general cargo ship sailing under the flag of the Marshall Islands, built in 2012, with call sign V7XE9, and gross tonnage of 33032.

Defendant, **New Vantage Shipping** was and now is a foreign corporation, or similar entity, with power to sue and be sued, which regularly does business in Texas, Louisiana and the United States as a common carrier of goods, which does not maintain a designated agent in Texas or Louisiana upon whom service can be made, and thus may be served through F.R.C.P 4(k)(2), in care of the following:

c/o KLAVENESS ASIA PTE LTD
10-02, Centennial Tower
3, Temasek Avenue
Singapore, 039190

DESCRIPTION OF SHIPMENT

Vessel:	M/V ORIENTAL PHOENIX
Date of Shipment:	June 20, 2014
Port of Shipment:	Subic Port, Philippines – V14L06P
Ports of Discharge:	HOUSTON, TEXAS
Bills of Lading:	DISQPHHT4267200, DISQSBHT4900604, 606 and 610 and others
Description of Cargo:	PRIME NEWLY PRODUCED CARBON STEEL ERW BPE (STANDARD PIPE)
Nature of Loss or Damage:	Physical Damages and Short Delivery
AMOUNT:	\$165,348.16